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RE: APPEAL - FOIA Request 2018-ICFO-55635

To Whom It May Concern,

I write to appeal the U.S. Immigration and Customs Enforcement's ("Agency") denial, *see* Ex. A (the "Denial"), issued in response to my 2019-08-01 Freedom of Information Act ("FOIA") request seeking records relating to documents produced during the 2017 modification of the ICE's Risk Classification Assessment, *see* Ex. B (the "Request").

BACKGROUND

In June 2018, it was widely reported that ICE changed its Risk Classification Assessment (RCA) algorithm during 2017 so that assessment never recommended release:

> Previously, the tool automatically recommended either "detain" or "release." Last year, ICE spokesman [Matthew] Bourke said, the agency removed the "release" recommendation, but he noted that ICE personnel can override it. (Reuters)[1]

In addition to Reuters, the changes to the RCA were covered by the ABA Journal[2], Vice[3], and The Daily Dot[4], among others, and stem from Executive Order 13767 ("Border Security and Immigration Enforcement Improvements," issued on January 25, 2017)[5].

Pursuant to the federal Freedom of Information Act, I requested records related to these changes. Immigration policy — and immigration detention policy in particular — has become a matter of deep, urgent, and continued public interest, and these records are of paramount

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[1] As referenced here: https://www.reuters.com/investigates/special-report/usa-immigration-court/
[2] http://www.abajournal.com/news/article/ice_risk_assessment_tool_now_only_recommends_detain
[3] https://motherboard.vice.com/en_us/article/evk3kw/ice-modified-its-risk-assessment-software-so-it-automatically-recommends-detention
[4] https://www.dailydot.com/debug/ice-risk-assessment-software/
[5] https://www.federalregister.gov/documents/2017/01/30/2017-02095/border-security-and-immigration-enforcement-improvements

Exhibit F

relevance to public debate and policy-making.

REQUEST

Based on the overwhelming public interest in this matter, on 2019-08-01, I submitted a FOIA request for:

- 'all documents produced during this modification of the Risk Classification Assessment (RCA) containing the words or phrases "Risk Classification Assessment," "RCA," or "algorithm."'

DENIAL

On 2019-02-11, the Agency issued its response to my request. According to the Denial, only 10 pages of responsive records (Ex. C) — one 10-page presentation — were located. Further, major portions of those records were "withheld pursuant to Exemptions (b)(5), (b)(6), (b)(7)(C), (b)(7)(E)".

ARGUMENT

"FOIA was enacted to facilitate public access to Government documents and was designed to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *CREW v. DOJ*, 746 F.3d 1082, 1088 (D.C. Cir. 2014) (marks and citation omitted). So "[a]t all times, courts must bear in mind that FOIA mandates a 'strong presumption in favor of disclosure.'" *ACLU v. DOJ*, 655 F.3d 1, 5 (D.C. Cir. 2011) (citation omitted). "Because of FOIA's 'goal of broad disclosure,' the Supreme Court has 'insisted that the exemptions be 'given a narrow compass.'" *CREW*, 746 F.3d at 1088 (citation omitted); *see also FBI v. Abramson*, 456 U.S. 615, 630 (1982) ("FOIA exemptions are to be narrowly construed."). "FOIA's 'limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act.'" *CREW*, 746 F.3d at 1088 (citation omitted). It is the Agency's burden to "establish[] that a claimed exemption applies." *Id.*

The Denial here is improper because, without legitimate justification, it favors secrecy—not disclosure. Not only is withholding improper for the reasons discussed below, it is improper because the Denial does not apply the mandated presumption of openness as it fails to explain, as it must, whether disclosure would actually harm an interest protected by the Exemptions to FOIA. As such, the Denial should be reversed and the records promptly disclosed consistent with the letter and spirit of FOIA.

The Agency Has Not Met Its Burden Of Proving That The Documents Are Subject To Withholding Under Exemption 5

Exemption 5 protects from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency." 5 U.S.C. § 552(b)(5). The Exemption exists only to protect from disclosure certain classes of agency documents exchanged among certain individuals, namely those documents that fall within the

deliberative process, attorney work-product, and attorney-client privileges. *Grand Cent. P'ship, Inc. v. Cuomo*, 166 F.3d 473, 481 (2d Cir.1999). The Supreme Court has emphasized that this Exemption, especially, "has finite limits." *EPA v. Mink*, 410 U.S. 73, 87 (1973). The withheld documents are not within those limits.

The deliberative process privilege protects documents shared within or among agencies that "reflect[] advisory opinions, recommendations and deliberations comprising part of a *process by which governmental decisions and policies are formulated*." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975) (emphasis added).

The Agency has the burden of showing that the records were part of a clear "process" leading to a final decision. *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980). To do so, the Agency must demonstrate that the withheld records are both predecisional *and* deliberative. *Vaughn v. Rosen*, 523 F.2d 1136, 1143 (D.C. Cir. 1975). If either is missing, the document must be disclosed, as is the case here. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975).

The Agency Has Not Met Its Burden Of Proving That The Documents Are Subject To Withholding Under The Privacy Exemptions

Exemptions 6 and 7(C) are interrelated. Exemption 6 applies to "'personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy,'" while Exemption 7(C) applies to "'records or information compiled for law enforcement purposes, but only to the extent the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy.'" *CREW v. DOJ*, 854 F.3d 675, 681 (D.C. Cir. 2017) (quoting 5 U.S.C. § 552(b)(6)-(7)). Where there is no dispute that the requested records were compiled for law enforcement purposes, only Exemption 7(C) need be addressed because it sets "a lower bar for withholding material" than Exemption 6. *CREW v. DOJ*, 746 F.3d 1082, 1091 n.2 (D.C. Cir. 2014). Because Exemption 7(C) only protects against disclosure that would "constitute an '*unwarranted*' invasion of personal privacy," agencies must necessarily consider whether the privacy interest sought to be protected outweighs the public interest in release of the information sought. *ACLU v. DOJ*, 655 F.3d 1, 6 (D.C. Cir. 2011). Here, there is no privacy interest to be protected and even if there were, the public interest would outweigh it.

1.1. Any corporate information is not covered by the Exemption

As an initial matter, to the extent the responsive records relate to corporations, those records cannot be withheld under Exemption 7(C). The Supreme Court has definitively answered the question of whether corporations have a privacy right under FOIA and it has concluded emphatically that they to not. *FCC v. AT&T, Inc.*, 562 U.S. 397, 410 (2011) ("The protection in FOIA against disclosure of law enforcement information on the ground that it would constitute an unwarranted invasion of personal privacy does not extend to corporations."). As such, to the extent any of the redactions or withheld responsive records concern corporations, those materials must be disclosed.

1.2. The personal privacy interest is *de minimis*

Not all personal privacy interests count for the purposes of Exemption 7(C). The existence of a privacy interest is context specific, and not every context will implicate one. *Brown v. Perez*, 835 F.3d 1223, 1236 (10th Cir. 2016) (disclosure of names does not itself create a privacy interest to be protected). For example, courts have found that the disclosure of embarrassing information, criminality, and government misconduct are not necessarily protected by this Exemption. *See, e.g.*, *Stern v. FBI*, 737 F.2d 84, 91-92 (D.C. Cir. 1984) ("individuals have a strong interest in not being associated *unwarrantedly* with alleged criminal activity" (emphasis added); *Sims v. CIA*, 642 F.2d 562, 575 (D.C. Cir. 1980) (disclosure of embarrassing information is not alone the sufficient). Courts have also held that even "personal information" can be disclosed so long as the identity of the person in the records is unknown. *ACLU v. DOD*, 543 F.3d 59, 84 (2d Cir. 2008).

Moreover, even where a cognizable privacy interest is identified, other factors may diminish those interests. For example, when information becomes publicly known, any "interests in privacy fade." *DOJ v. Reporters Comm.*, 489 U.S. 749, 764 n.15 (1989); *see also CREW v. DOJ*, 746 F.3d 1082, 1092 (D.C. Cir. 2014); *ACLU v. DOJ*, 655 F.3d 1, 7 (D.C. Cir. 2011) (noting that there was nothing more than a *de minimis* privacy interest in "the disclosure of convictions and public pleas"). And when information is many years old or the individual has died, privacy interests may also fade. *Outlaw v. Dep't of Army*, 815 F.Supp. 505, 506 (D.D.C. 1993) (privacy interests diminished where records "relate to events which occurred . . . twenty-five years ago"); *see also Davis v. DOJ*, 460 F.3d 92, 92 (D.C. Cir. 2006) (death of individual in records decreases privacy interest therein). Information relating to government misconduct and incompetence also further diminishes any privacy interests. *See, e.g.*, *Perlman v. DOJ*, 312 F.3d 100, 107-09 (2d Cir. 2002) (finding privacy interest "substantially outweighed by the public's interest in exposing the flaws in the administration" of a government program).

1.3. The public interest in disclosure is overwhelming

The public interest in this case speaks for itself. A requester may demonstrate the public interest by first "show[ing] that the public interest sought to be advanced is a significant one," and, second, "show[ing] the information is likely to advance that interest." *NARA v. Favish*, 541 U.S. 157, 172 (2004). Here, both factors are easily satisfied.

For the purposes of Exemption 7, the public interest at issue is that embodied by FOIA's "core purpose" of "shed[ding] light on an agency's performance of its statutory duties." *DOJ v. Reporters Comm.*, 489 U.S. 749, 773-76 (1989). The records sought relate directly to the Agency's performance of its duties. *ACLU v. DOJ*, 655 F.3d 1, 12-13 (D.C. Cir. 2011) (public interest reaches any information that advances "the citizens' right to be informed about what their government is up to"). In determining the extent of the public interest, agencies should also consider the amount of media attention an issue has received, and more generally whether an issue is the subject of public debate or government action. Because the records relate to the inner workings of the Agency, and the subject matter therein has been covered widely in the media, this is precisely the kind of case where the public interest has been found to be significant. *ACLU v. DOJ*, 655 F.3d 1, 12-13 (D.C. Cir. 2011) (public interest reaches any information that advances "the citizens' right to be informed about what their government is up to").

Additionally, disclosure will advance this interest. Disclosure of documents detailing government malfeasance and incompetence is, of course, likely to advance the significant public interest in knowing what the government is up to. *Stern v. FBI*, 737 F.2d 84, 93-94 (D.C. Cir. 1984); *see also Perlman v. DOJ*, 312 F.3d 100, 107-09 (2d Cir. 2002) (ordering release of documents relating to investigation of INS general counsel implicated in wrongdoing). But the advancement of the public interest inquiry is not limited to wrongdoing. Indeed, nothing in FOIA is solely focused on uncovering misconduct. *See, e.g.*, *Judicial Watch, Inc. v. Secret Serv.*, 579 F. Supp. 2d 151, 154 (D.D.C. 2008) (disclosure of visitor "names would shed light on why the visitor came to the White House"); *see also Cooper Cameron Corp. v. Dep't of Labor*, 280 F.3d 539, 549 (5th Cir. 2002) (holding that "no showing of agency irregularity or illegality" by the agency is required to show a public interest in disclosure). Thus, misconduct or not, the public interest is great here.

1.4. The public interest significantly outweighs the privacy interest

As an initial matter, because there is no more than a *de minimis* privacy interest at issue here, there is no need to conduct a balancing test and the records should be disclosed. *ACLU v. DOD*, 543 F.3d 59, 87 (2d Cir. 2008) ("we are not compelled to balance interests where there is no more than a de minimis privacy interest at stake.").

But even if there were, the public interest here vastly outweighs it. *Roth v. DOJ*, 642 F.3d 1161, 1181 (D.C. Cir. 2011) (public interest in knowing whether federal government withheld information corroborating an inmate's innocence outweighed privacy interests of men potentially linked to murders); *ACLU v. DOJ*, 655 F.3d 1, 16 (D.C. Cir. 2011) (public interest in disclosure of prosecutions where defendants were subject to warrantless cell phone tracking outweighed privacy interest); *EFF v. DNI*, 639 F.3d 876, 887 (9th Cir. 2010) (public interest in disclosure of corporate lobbyists clearly outweighed privacy interests). As with all these cases, the public interest here outweighs the private interest in nondisclosure.

The Agency Has Not Met Its Burden Of Proving That The Documents Are Subject To Withholding Under Exemption 7(E)

Exemption 7(E) does not apply here. Exemption 7(E) applies to records that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. § 552(b)(7)(E). Agencies must "offer more than 'generic assertions' and 'boilerplate' to justify Exemption 7(E) withholding." *Am. Civil Liberties Union Found. v. Dep't of Homeland Sec.*, 243 F. Supp. 3d 393, 403 (S.D.N.Y. 2017). The Agency has the burden of showing that withholding is proper, and here it has not done so.

1. The information is not a "technique," "procedure," or "guideline"

Exemption 7(E) applies only to information that would "disclose *techniques* and *procedures*" or "*guidelines* for law enforcement investigations or prosecutions." 5 U.S.C. § 552(b)(7)(E) (emphasis added). "Techniques" and "procedures" refer to "how law enforcement officials go

about investigating a crime." *Lowenstein Int'l Human Rights v. DHS*, 626 F.3d 678, 682 (2d Cir. 2010). Specifically, a "'technique' is 'a technical method of accomplishing a desired aim' and a 'procedure' is 'a particular way of doing or going about the accomplishment of something.'" *ACLU*, 243 F. Supp. 3d at 402. A guideline, on the other hand, refers to those agency decisions regarding "resource allocation." *Id.* In short, this Exemption "requires that the material being withheld truly embody a specialized, calculated" technique, procedure, or guideline." *Id.*

Thus, for example, it is improper to rely on Exemption 7(E) to withhold legal analysis, *PHE, Inc. v. DOJ*, 983 F.2d 248, 251 (D.C. Cir. 1993), rote "questions and answers put to alien minors suspected of smuggling," *ACLU*, 243 F. Supp. 3d at 395, reports on the number of arrests made by a law enforcement agency, *Families for Freedom v. CPB*, 797 F.Supp.2d 375, 391 (S.D.N.Y. 2011), general statistics about open or closed investigations, *ACLU v. FBI*, No. 14-cv-11759 (D. Mass. Aug. 17, 2016), and other similar records that do not reflect specific techniques, procedures, or guidelines. *See also Michnick v. DHS*, 225 F.Supp.3d 1069, 1078 (N.D. Cal. 2016) ("So long as DHS redacts *how* it obtained information . . . , disclosing *what* it found out would not disclose a law enforcement technique, procedure, or guideline.").

Here, the Agency has asserted that Exemption 7(E) applies, and thus has necessarily asserted that the information withheld is a technique, procedure, or guideline—but this is far from clear. Indeed, the Agency has not even attempted to qualify under which of the three it is withholding the documents. At any rate, the requested records simply do not qualify as guidelines, techniques, or procedures. For these reasons, the Denial on this basis should be reversed.

2. The information would not make it easier for individuals to evade the law

Even if records are techniques, procedures, or guidelines, the Agency must also demonstrate that their disclosure could reasonably be expected to risk circumvention of the law. It must do so with specifics, not general averments. As such, courts have rejected agencies reasons for withholding based on a "lack[] any case-specific, meaningful explanation as to how any particular technique, procedure or guideline at issue in this case would make it easier for individuals to evade the law." *Jett v. FBI*, 139 F.Supp.3d 352, 363 (D.D.C. 2015) (rejecting Hardy declaration). In other words, an agency must come up with more than "familiar incantations" that disclosure could risk circumvention of a law enforcement technique. *Defenders of Wildlife v. Border Patrol*, 623 F. Supp.2d 83, 90 (D.D.C. 2009) (agency must provide enough information to determine why the specific information in each withheld document "'could reasonably be expected to risk circumvention of the law'"); *see also Fowlkes v. ATF*, 67 F.Supp.3d 290, 306 (D.D.C. 2014) (same); *ACLU v. Office of the Dir. of Nat'l Intelligence*, No. 10-cv- 4419, 2011 WL 5563520, at *11 (S.D.N.Y. Nov. 15, 2011) (same).

Here, all the Agency has done is "incant" those "familiar" phrases that FOIA requesters are so used to seeing. *Long v. ICE*, 149 F.Supp.3d 39 , 53 (D.D.C. 2015) ("Courts have a responsibility to ensure that an agency is not simply manufacturing an artificial risk and that the agency's proffered risk assessment is rooted in facts."). For that reason, the Denial is, on its face inadequate. At any rate, given the nature of the records, it is entirely unclear what possibly could be expected to risk circumvention of the law. For this reason too, the Denial should be reversed.

3. The information sought is generally known to the public

At any rate, this Exemption protects only techniques and procedures that are not well-known to the public. *ACLU v. DOJ*, 70 F.Supp.3d 1018, 1035 (E.D. Cal. 2014); *Albuquerque Pub. Co. v. DOJ*, 726 F. Supp. 851, 857 (D.D.C. 1989) (withholding improper under Exemption 7(E) where there was "nothing exceptional or secret about the techniques [the agency] described"). "It would not serve the purposes of FOIA to allow the government to withhold information to keep secret an investigative technique that is routine and generally known." *Rosenfeld v. DOJ*, 57 F.3d 803, 815 (9th Cir. 1995).

As such, information generally known to the public cannot be withheld under this Exemption. This is true even if "the public is unaware of the specifics of how and when a technique is employed," so long as the underlying techniques are known. *ACLU v. DOJ*, 70 F.Supp.3d at 1038. It is the Agency's burden to demonstrate that the information withheld is not well-known; it is not the requester's burden to demonstrate that the information is well-known. *See, e.g.*, *Am. Marine, LLC v. IRS*, No. 15-cv-0455-BTM-JMA (S.D. Cal. Jul. 26, 2017) (withholding improper where agency failed to show that the requested records were *not* generally available to the public). The Agency must be able to provide actual *evidence* demonstrating that the techniques, procedures, or guidelines are not well-known. *Fitzgibbon v. United States Secret Serv.*, 747 F.Supp. 51, 60 (D.D.C. 1990) ("Both agencies assert that these techniques are not generally known to the public . . . [h]owever, these claims are general and cursory at best").

The government has thus acknowledged in its own handbook that techniques or procedures such as "'wiretaps,' the 'use of post office boxes,' pretext telephone calls, and 'planting transponders on aircraft suspected of smuggling'" are not protected under this Exemption. *Department of Justice Guide to the Freedom of Information Act* at 640. Other examples abound. *Albuquerque Pub. Co.*, 726 F.Supp. at 857-58 ("Anyone who is familiar with the media, both television and print, is aware that the [agents] use these and similar techniques in the course of . . . investigations. [The agency's] position in this respect disregards reality."); *see also* H.R. Rep. No. 1380, 93d Cong., 2d Sess. 12 (1974) (Exemption does not apply to, for example, "ballistics tests, fingerprinting, and other scientific tests or commonly known techniques").

Here, for any number of reasons, the information sought to be withheld, even if it can be said to be a technique, procedure, or guideline is generally known and thus not subject to withholding under FOIA.

The Agency Has Not Met Its Burden Of Proving That It's
Search Was Reasonably Calculated To Uncover All Relevant Documents

FOIA requests must be liberally construed. "If the agency can lightly avoid its responsibilities by laxity in identification or retrieval of desired materials, the majestic goals of [FOIA] will soon pass beyond reach." *Founding Ch. of Scientology v. NSA*, 610 F.2d 824, 837 (D.C. Cir. 1979). Searches under FOIA must be adequate. An inadequate search amounts to an improper withholding because it is not "reasonably calculated to uncover all relevant documents" that must be disclosed to a requester. *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). In this case, the Denial should be reversed and the request remanded with directions to the

Agency to conduct a proper search.

Whether a search is adequate is judged by a reasonableness standard. *Campbell v. United States*, 164 F.3d 20, 27 (D.C. Cir. 1999) (reasonableness should be applied "consistent with congressional intent tilting the scale in favor of disclosure" (internal citations omitted)). An agency must demonstrate "beyond material doubt" that its search was adequate. *Nation Magazine, Wash. Bureau v. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995). Mere conclusory assertions do not suffice. *Toensing v. DOJ*, 890 F. Supp. 2d 121, 142 (D.D.C. 2012). Instead, an agency must "describe in . . . detail what records were searched, by whom, and through what process." *Steinberg v. DOJ*, 23 F.3d 548, 551 (D.C. Cir. 1994) (citation omitted). So the absence of bad faith alone will not does not establish an adequate search. *Krikorian v. Dep't of State*, 984 F.2d 461, 468 (D.C. Cir. 1993). Thus, where "a review of the record raises substantial doubt" about the adequacy of the search, a denial must be reversed. *Valencia-Lucena v. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999) (citation omitted).

1. The Agency failed to search systems likely containing responsive records

There is reason to doubt that the Agency searched all systems likely to contain responsive records. While an agency need not "search every record system," it may not "limit its search to only one record system if there are others that are likely to turn up the information requested." *Campbell v. United States*, 164 F.3d 20, 28 (D.C. Cir. 1999). In other words, the adequacy of the search requirement imposes certain obligations on an agency.

For example, "[w]hen all other sources fail to provide leads to [a] missing record, agency personnel should be contacted if there is a close nexus . . . between the person and the particular record." *Valencia-Lucena v. Coast Guard*, 180 F.3d 321, 328 (D.C. Cir. 1999). Moreover, an agency must refer a request to another component or department if it is likely to have responsive records. *PETA v. NIH*, 745 F.3d 535, 544 (D.C. Cir. 2014); *see also Defenders of Wildlife v. Dep't of Interior*, 314 F. Supp. 2d 1, 12 (D.D.C. 2004) (finding, where records sought related to various ethical matters, that search was inadequate where agency did not search the Office of Inspector General). In simple terms, "[w]hen . . . an agency becomes reasonably clear as to the materials desired, FOIA's text and legislative history make plain the agency's obligation to bring them forth." *PETA*, 745 F.3d at 544.

Here, the systems searched and the extent to which they were searched is entirely unknown. Moreover, it is unknown whether the Agency pursued all reasonable leads in searching out responsive records. As such, the Agency has not fulfilled its obligations under FOIA.

2. The Agency failed to discover documents known to exist

The Agency purports to have found few or no responsive records, but there can be no doubt that it has records in its possession responsive to the request. While a particular document not turning up does not necessarily demonstrate an inadequate search, *Boyd v. DOJ*, 475 F.3d 381, 391 (D.C. Cir. 2007), the weight of authority holds that such a showing supports such a finding, *see, e.g.*, *Aguiar v. DEA*, 865 F.3d 730, 739 (D.C. Cir. 2017) ("failure to find a record that once existed" provides some evidence of an inadequate search); *Valencia-Lucena v. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999) (summary judgment inappropriate in light of "well

defined requests and positive indications of overlooked materials"); *Krikorian v. Dep't of State*, 984 F.2d 461, 468 (D.C. Cir. 1993) (holding that failure to identify particular documents known to exist weighed in favor of an inadequate search); *Wolf v. CIA*, 357 F. Supp. 2d 112, 119 (D.D.C.2004) (failure to turn up a memorandum was evidence of the inadequacy of the search). As one court explained, the failure to turn up a specific document originating in an agency's director's office "casts 'substantial doubt' on the sufficiency of the search of that office." *Friends of Blackwater v. Dep't of Interior*, 391 F.Supp.2d 115, 120-21 (D.D.C. 2005). Here, the requester is in receipt of documents that should have turned up in the search but were not. Thus, this weighs in favor of a finding that an adequate search was not conducted.

Specifically, the final page of Ex. C references a spreadsheet containing "The complete list of all 72 rules, recommendations, and changes." — but that spreadsheet was not included in the denial. Given the lack of inclusion of this obviously-responsive record, there are likely many more missing.

3. The Agency failed to reasonably describe its search

The search is also inadequate because the Agency failed to "describe in . . . detail what records were searched, by whom, and through what process." *Steinberg v. DOJ*, 23 F.3d 548, 551 (D.C. Cir. 1994). An agency should use its "superior knowledge of the contents of [its] files . . . to further the philosophy of [FOIA] by facilitating, rather than hindering the handling of requests for records." *Founding Ch. of Scientology v. NSA*, 610 F.2d 824, 838 n.107 (D.C. Cir. 1979). In describing its search, an agency must avoid conclusory assertions merely identifying the systems searched, and must instead explain with some detail the process by which it went about conducting its search. *Krikorian v. Dep't of State*, 984 F.2d 461, 468 (D.C. Cir. 1993) (chastising a district court that only "listed the locations the [agency] searched to satisfy [the] request"); *see also Aguiar v. DEA*, No. 16-5029, --- F.3d --- (D.C. Cir. Aug. 4, 2017) (rejecting affidavit that described "agency employees to whom the search 'was assigned,' 'why they were chosen,' and what they found" as inadequate because it did not also say *how* the search was conducted). Moreover, an agency must be able to identify how many documents it did find. *Id.* In sum, an agency must "'explain in reasonable detail the scope and method of the search conducted by the agency.'" *Nat'l Sec. Counselors v. CIA*, 960 F.Supp.2d 101, 152 (D.D.C. 2013).

Here, the Agency has not done so. In fact, the Agency has given no indication at all what kind of search it conducted. As such, the Agency should be ordered to conduct the search as it should have been conducted in the first place.

* * *

For the foregoing reasons, the Agency's decision should be reversed and the Request should be granted in full. To the extent that it is affirmed, in whole or in part, please provide a detailed explanation for that decision. Because this information is on a matter of great public interest, we request expedited treatment of this Appeal. In any event, we trust that we will receive your decision within 20 business days as required by 5 U.S.C § 552(a)(6)(A)(ii).

Thank you for your prompt attention to this matter. Please feel free to reach out to me at any time.